

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RANDY SOWELL,

Plaintiff,

-against-

CAPTAIN KELLY, *et al.*,

Defendants.

23-CV-5354 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

By order dated October 16, 2023, the Court granted Plaintiff leave to file an amended complaint within 60 days. On November 28, 2023, in another case pending before the Court, *Sowell v. Annucci*, No. 22-CV-6538 (LTS), Plaintiff informed the Court that he had been transferred to a facility in New Jersey. Accordingly, on January 2, 2024, the Court issued an order directing Plaintiff to update his address in this case and notified him that failure to do so would result in dismissal of the action without prejudice, under Rule 41(b) of the Federal Rules of Civil Procedure, for failure to prosecute. The Clerk's Office mailed the order to the Cape May Correctional Facility, where public records indicated Plaintiff was detained. On February 23, 2024, the Court's January 2, 2024 order was returned to the Court as undeliverable because Plaintiff was released and did not provide a forwarding address.

Accordingly, on February 26, 2024, the Court dismissed Plaintiff's complaint without prejudice for failure to prosecute, *see* Fed. R. Civ. P. 41(b), and the Clerk's Office entered judgment on February 28, 2024. These documents were all returned to the court as undeliverable.

On February 24, 2025, the Court received a letter from Plaintiff, indicating that in January 2024, he hand-delivered a copy of his second amended complaint "to 500 Pearl Street." (ECF 12.) The Court, however, is not in receipt of this second amended complaint because the Clerk's Office never received the submission.

CONCLUSION

Accordingly, should Plaintiff wish to proceed with this action, he must (1) file a motion for reconsideration, *see* Fed. R. Civ. P. 60(b), asking the Court to vacate the order of dismissal and civil judgment, and reopen this action; and (2) resubmit his second amended complaint.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444–45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

This case remains closed.

SO ORDERED.

Dated: March 4, 2025
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge